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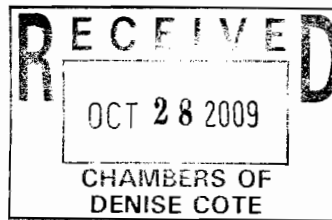
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October 27, 2009

BY HAND

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Hon. Denise Cote  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312



USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>10/28/09</u>
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RE: IN RE APPLICATION OF CBS RADIO, INC., 09 CIV. 7075, RELATED TO  
UNITED STATES V. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS, 41 CIV. 1395

Dear Judge Cote:

We represent ASCAP in connection with the above-referenced proceeding. ASCAP filed its application commencing this proceeding on May 7, 2009, and served the application with accompanying initial document requests on CBS Radio, Inc. ("CBS") the same day. ASCAP's initial request for production of documents (a copy of which is attached to the application), focused on the documents most relevant for an interim fee briefing. CBS finally provided written responses to the requests four months later, on September 10, 2009, but did not begin producing documents until September 30, 2009. To date, CBS has produced 454 pages of documents plus a number of excel spreadsheets, and has advised ASCAP that it is continuing to look for responsive documents. While we have been discussing with CBS's counsel the adequacy of its responses and attempting to obtain assistance in parsing the opaque nature of what it has produced to date, as outlined in our letters of today to the Court, ASCAP is at an impasse with Yahoo! Inc. ("Yahoo!") and AOL LLC ("AOL") regarding ASCAP's pending third party subpoenas *duces tecum* and *ad testificandum* to each of those entities which are critical to setting an interim fee.

At this time, ASCAP has not received sufficient discovery from CBS, Yahoo! or AOL to prepare a proper interim fee proposal. As outlined in our letters of today, ASCAP has not received sufficient discovery to determine anything whatsoever about the value of a through-to-the-audience license that CBS seeks and that would cover CBS content available through Yahoo! and AOL, let alone the information and data needed to calculate the fee for CBS attributable to Yahoo! and AOL based on the formula set by the Court for these internet portals in its April 2008 Opinion and January 2009 Judgment.

We therefore respectfully request that the Court (i) adjourn the date by which ASCAP was to file its interim fee papers until such time as the Court rules on ASCAP's request that AOL and Yahoo! comply with the subpoenas and they so comply; and (ii) set a control date by which the parties shall advise the Court of the status of CBS's, Yahoo!'s and AOL's production and give the Court their recommendations regarding a new schedule for interim fee briefing.

Respectfully submitted,

  
David Leichtman

*The interim fee motion  
is adjourned sine die.*

*Denise Cote  
Oct 28, 2009*

cc: Richard Reimer, Esq., Christine Pepe, Esq., Hillel I. Parness, Esq.  
Bruce Rich, Esq., Heather Solow, Esq.

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